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C. S. 15

(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Division Bench

M.A. NO. 922 OF 2004.

APPELLANT :- United India Insurance Company Ltd., Allahabad (Uttar Pradesh).

NON-APPLICANT NO. 3

VERSUS

RESPONDENTS :- 1. Smt. Dashmati @ Dasmati, widow of Late Hetram, aged about 30 years, Resident of Bartunga Colliery, Chirmiri District presently Korea(Chhattisgarh),

2. Smt. Bhuri Bai, wife of Nanki, aged about 55 years, resident of Bartunga Colliery, Chirmiri, District Korea(C.G.)

3. Basant Kumar, son of Late Hetram, aged about 13 years,

4. Ashok Kumar, son of Late Hetram, aged about 9 years,

5. Vinod Kumar, son of Late Hetram, aged about 7 years,

All respondent no. 3,4,5 through legal Guardian Smt. Dashmati, widow of Late Hetram, all resident of Bartunga Colliery, Chirmiri, Tahsil Manendragarh, District Presently Korea (Chhattisgarh)

CLAIMANTS

6. Naim Khan, son of unknown, resident of 215 Veligaon, Allahabad (Uttar Pradesh),

7. Kailash Nath Yadav, son of Ratiram, resident of Vishnupur, Police Station Sikrara, District Allahabad (Uttar Pradesh).

NON-APPLICANT NO. 1 AND 2.

P. R. No. 1949/04
Presented by Shri H. B. Agrawal
dt. 27-8-04

APPEAL UNDER SECTION 173 OF MOTOR VEHICLES ACT 1988

XI-HC-22

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...M.A.No. 922/2004 **सन्** 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri L.C. Bhadoo, J.

30/03/2005: -

MISC. APPEAL NO.922 OF 2004: -

Heard Mr. H.B. Agrawal, Sr. Adv., with Miss Shipra Biswas learned counsel for the appellant.

This is an appeal filed by United India Insurance Co. Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the award dated 21/06/2004, passed by the Additional Motor Accident Claims Tribunal, Manendragarh, district Korea in Claim Case No.06 of 1997 awarding a sum of Rs.9,85,000/- in favour of respondents/claimants.

The ground taken in the appeal memorandum is that the Tribunal was wrong in not framing the issue of contributory negligence though pleaded by the appellant and that the compensation should have been reduced after apportioning the contribution to the accident by the deceased.

The appeal is not maintainable as the appeal by the insurer against the award on the ground that the compensation amount was liable to be reduced on account of contributory negligence on the part of the deceased, was not maintainable as the conditions specified in Section 170 of the Motor Vehicles Act, 1988 were not satisfied and as a matter of fact no permission was granted by the Tribunal to the Insurance Company to contest the proceedings before the Tribunal on the grounds other than the grounds mentioned in Section 149(2) of the

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said Act. The Supreme Court in the case of **National Insurance Co. Ltd, Chandigarh Vs. Nicolletta Rohtagi and others**, reported in **2002 SAR (Civil) 860** has decided the aforesaid issue and the relevant paragraphs i.e. 31 & 32 of the aforesaid judgment are quoted hereunder:

> "31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and insured or the insured does not contest the claim and, further, the Tribunal does not implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits n that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is

(पीछे देखिये)

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

no longer *res integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle."

It will be clear from the aforesaid judgment of the Supreme Court that unless the conditions precedent specified in Section 170 of the Act 1988 are satisfied, the Insurance Company has no right of appeal to challenge the award on merits and in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim, it is open to the insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made and if such permission is granted and the insurer is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against the award on merits, if aggrieved. Otherwise, the quantum of compensation cannot be challenged by the insurer in an appeal under Section 173 of the Act 1988. It will also be clear from the aforesaid judgment that unless the conditions specified in Section 170 of the Act 1988 are satisfied, it is not permissible for an insurer to question the quantum of compensation as well as the findings

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as regards negligence or contributory negligence of the offending vehicle.

On perusal of the records of the Tribunal, we find that no permission was applied for under Section 170 of the Act 1988 by the appellant to contest the claim of the respondent/claimants on merits and no permission has been granted by the Tribunal to the appellants in that regard.

Mr. Agrawal further submitted that the Tribunal has awarded interest at the rate of 15% per annum in default of payment of compensation within two months and such award of interest at the rate of 15% per annum was not justified and award of interest should have been limited to 9% per annum.

We find on reading of the impugned award of Tribunal that the rate of interest on the quantum of compensation awarded was actually 9% per annum and it is only in case of default of payment of compensation within two months, that the insurer is liable to pay interest at the rate of 15% per annum. Thus, the ground taken by the insurer that the higher rate of interest at the rate of 15% per annum has been awarded on the compensation has no merit.

In view of the aforesaid decision of the Supreme Court, this appeal is not maintainable and the same is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
L.C. BHADOO
Judge

(पीछे देखिये)